

Message Text

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ORIGIN EB-08

INFO OCT-01 ARA-10 EUR-12 EA-10 IO-13 ISO-00 TRSE-00
SIG-03 AGRE-00 CEA-01 CIAE-00 COME-00 DODE-00
FRB-03 H-01 INR-10 INT-05 L-03 LAB-04 NSAE-00
PA-01 CTME-00 AID-05 SS-15 STR-07 ITC-01 SP-02
SOE-02 OMB-01 DOE-15 NSCE-00 SSO-00 USIE-00
INRE-00 /133 R

DRAFTED BY EB/OT/STA:CBLUM
APPROVED BY EB/IIP:WBARRACLOUGH
EB/STA:TO'HERRON
EA/J:D BROWN(SUBS)
TREASURY:PEHRENHAFT
TREASURY:MGADBAW

-----112470 240113Z /64

O R 240032Z MAR 78
FM SECSTATE WASHDC
TO AMEMBASSY TOKYO IMMEDIATE
INFO AMEMBASSY BONN
AMEMBASSY BRUSSELS
AMEMBASSY DUBLIN
AMEMBASSY THE HAGUE
USMISSION GENEVA
AMEMBASSY LONDON
AMEMBASSY PARIS
AMEMBASSY ROME
AMEMBASSY OTTAWA
AMEMBASSY MEXICO
AMEMBASSY BRASILIA
AMEMBASSY COPENHAGEN
AMEMBASSY LUXEMBOURG

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US EEC ALSO FOR EMBASSY, US OECD ALSO FOR EMBASSY
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E.O. 11652:N/A

TAGS: ETRD, JA

SUBJECT: COURT CHALLENGE TO TRIGGER PRICE SYSTEM

REFS: (A) STATE 60410, (B) STATE 1-1083

1. THE DAVIS WALKER CORPORATION, A LARGE WIRE PRODUCER, FILED COMPLAINT IN U.S. DISTRICT COURT MARCH 10 CHALLENGING LEGALITY OF TRIGGER PRICE MECHANISM (TPM). DAVIS WALKER ARGUES THAT:

-- THERE IS NO STATUTORY AUTHORITY FOR THE TPM UNDER THE ANTIDUMPING ACT OR OTHER LEGISLATION.

-- TREASURY VIOLATED THE PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT BY FAILING TO PUBLISH PROPOSED RULEMAKING NOTICES IN THE FEDERAL REGISTER AND BY IMPLEMENTING THE TPM ITSELF AND THE SPECIFIC TRIGGER PRICES WITHOUT AN APPROPRIATE PERIOD FOR COMMENT.

-- TREASURY HAS ACTED ARBITRARILY AND CAPRICIOUSLY IN ESTABLISHING TRIGGER PRICES FOR WIRE ROD.

2. IT IS ASKING COURT TO:

-- ENJOIN TREASURY FROM ENFORCING THE REGULATIONS WITH RESPECT TO WIRE ROD; AND

-- DECLARE "INVALID AND CONTRARY TO LAW" THE TRIGGER PRICE MECHANISM AND REGULATIONS WITH RESPECT TO WIRE ROD. LIMITED OFFICIAL USE

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3. IN BRIEFS AND ORAL ARGUMENTS HEARD MARCH 23, USG HAS SOUGHT TO REBUT DAVIS WALKER ALLEGATIONS. JUDGE IS STUDYING CASE AND COULD ISSUE A DECISION AT ANY TIME.

4. IN THE COURSE OF PRE-HEARING INVESTIGATION CONTEMPLATED BY RULES OF CIVIL PROCEDURE, DAVIS WALKER ASKED TO SEE COST DATA SUPPLIED BY JAPANESE PRODUCERS THROUGH MITI ON A CONFIDENTIAL BASIS. COURT REJECTED USG CLAIM OF EXECUTIVE PRIVILEGE, AND ORDERED TREASURY ON MARCH 23 TO MAKE THE JAPANESE DATA AVAILABLE IMMEDIATELY UNDER A PROTECTIVE ORDER TO PLAINTIFF'S COUNSEL ONLY (I.E., NOT TO DAVIS WALKER). UNDER PENALTY OF CONTEMPT OF COURT, THOSE PERMITTED TO SEE THE DATA MUST SWEAR NOT TO DISSEMINATE IT ANY FURTHER. THE GOJ HAS EXPRESSED ITS CONCERN OVER THIS DEVELOPMENT, BUT ITS FEARS MAY BE EXAGGERATED. PROTECTIVE ORDER IS A MECHANISM TO PROVIDE CONTINUED CONFIDENTIALITY. MOREOVER, JAPANESE DATA IS IN AGGREGATED, COMPOSITE FORM RATHER THAN ON A COMPANY-BY-COMPANY BASIS. PRODUCTION OF DATA WAS NECESSARY TO AVERT PREJUDICING USG CASE AND IS IN LINE WITH STATEMENTS MADE TO JAPANESE BY TREASURY GENERAL COUNSEL MUNDHEIM WHEN DOCUMENTS WERE

DELIVERED. WE HOPE, THEREFORE, THAT JAPANESE COOPERATION
IN SUPPLYING FUTURE DATA WILL NOT BE AFFECTED BY THIS
LIMITED DISCLOSURE.

5. REQUEST EMBASSY CONVEY CONTENTS PARA 4 TO APPROPRIATE
GOJ OFFICIALS.

6. FYI. DOMESTIC WIRE PRODUCERS HAVE ARGUED THAT THE TPM
AS PRESENTLY APPLIED DISCRIMINATES AGAINST THEM AND IN
FAVOR OF FOREIGN WIRE PRODUCERS. FOR YEARS, U.S. WIRE
PRODUCERS HAVE PURCHASED A PERCENTAGE OF THEIR RAW
MATERIAL--WIRE ROD--FROM ABROAD BOTH TO REDUCE COSTS AND
TO GUARANTEE AN ADEQUATE SUPPLY, SINCE THEY ASSERT U.S.
WIRE ROD CAPACITY IS OFTEN INSUFFICIENT TO MEET DEMAND.
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IF TREASURY APPLIES THE TRIGGER PRICE ON WIRE ROD WITHOUT
DOING SO FOR ALL OR NEARLY ALL WIRE PRODUCTS (AS OF NOW,
NO TRIGGER PRICES HAVE BEEN ANNOUNCED FOR ANY WIRE PRODUCT,
DUE TO THE GREAT COMPLEXITY OF THE NECESSARY CALCULATIONS),
THE WIRE PRODUCERS FEEL THEY WILL BE DRIVEN OUT OF BUSINESS
BY INTEGRATED PRODUCERS IN THE U.S. AND ABROAD. IN
RECOGNITION OF THE WIRE INDUSTRY'S POSSIBLY UNIQUE CIRCUM-
STANCES, TREASURY DECIDED ON MARCH 7 TO REVIEW WHETHER WIRE

ROD SHOULD REMAIN UNDER THE TPM AND WHETHER TRIGGER PRICES
SHOULD BE ESTABLISHED FOR WIRE AND WIRE PRODUCTS (REFTEL).
COMMENTS WERE INVITED FROM INTERESTED PARTIES AND A
HEARING SCHEDULED AT TREASURY FOR MARCH 28. A LARGE
TURN-OUT IS EXPECTED, INCLUDING DAVIS WALKER. END FYI. VANCE

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Message Attributes

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